

**STATE OF CONNECTICUT**  
**CONNECTICUT SITING COUNCIL**

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**APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC AND  
TARPON TOWERS II, LLC**



**92 GREENS FARMS ROAD  
WESTPORT, CT 06880**

**Docket No. \_\_\_\_\_**

**MAY 26, 2022**

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## **EXECUTIVE SUMMARY**

Applicants New Cingular Wireless PCS, LLC (“AT&T”) and Tarpon Towers II, LLC (“Tarpon”) (AT&T and Tarpon are collectively referred to as the “Applicants”) submit an application and supporting documentation (collectively “Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, maintenance, and operation of a wireless telecommunications facility (“Facility”) at 92 Greens Farms Road, Westport, Connecticut (the “Property” or the “Site”). The Facility would provide AT&T and Cellco Partnership, d/b/a Verizon Wireless (“Verizon”) with enhanced wireless communications and the opportunity for improved 911 service in this area of Westport (the “Town”).

The Facility would consist of a 124-foot monopole structure (not to exceed 124’ with antennas) within a 35’ x 64’ fenced equipment compound (within a 2500 square foot leased area) surrounded by a chain-link fence. The tower would accommodate the antenna arrays of AT&T, Verizon, and two future wireless carriers. The antennas initially affixed to the monopole will consist of AT&T panel antennas, mounted in three sectors, at a centerline height of 120’, and Verizon panel antennas, mounted in three sectors, at a centerline height of 110’. Access to and from the Site will be from Greens Farms Road.

The Property is an approximately 1.99-acre parcel zoned as Residence AA in the Town’s zoning records. The Site is situated on the east side of Hillspoint Road (and the Hillspoint Road Interstate 95 overpass), to the south side of Greens Farms Road, with Interstate 95 directly to the south.

Tarpon is a wireless infrastructure provider that uses its knowledge of the wireless carriers’ networks and/or specific information from the individual carriers to develop new

wireless facilities where a need has been demonstrated. Tarpon only pursues a site search for a new tower when it is clear that a new tower facility will be required, and all other options have been evaluated and/or exhausted. When conducting a site search, Tarpon, in consultation with the appropriate wireless carrier radio frequency engineers, identifies search areas central to the necessary geographical coverage area. In this case, AT&T and Verizon identified a need for wireless coverage and capacity relief in this area of Westport and have agreed to support this application to construct a new facility in this location to provide the required fill in coverage and capacity relief, with AT&T serving as a co-applicant with Tarpon.

The Applicants filed a Technical Report with the Town of Westport on August 31, 2021. As described in detail below, the Applicants proceeded to engage in more than *eight months* of discussions with the Town in an effort to explore whether any other sites might be viable alternatives to the proposed Site. In that time, the Town expressed its opposition to the proposed Site largely because the Property is zoned residential. Over an eight-month period – working in good faith with the Town – the Applicants spent time vetting the possibility of locating the Facility at multiple sites, including commercial property at 55 Greens Farms Road, property owned by Eversource on 197 Compo Road South, the Assumption Cemetery located at 57 Greens Farms Road, an office complex at 200 Nyala Farms, and two parcels owned by the Connecticut Department of Transportation (“CDOT”) on Hales Road. In each instance the alternative sites proved to be unavailable because property owners would not agree to lease their properties for purposes of a cell tower. The office complex at Nyala Farms and a location at the Town

Garage-Transfer Station on the Sherwood Island Connector were not viable sites from an RF perspective.

Throughout the municipal consultation process, the Applicants stayed in close contact with Town counsel to try to identify a location that would meet the carriers' needs while also being a location that the Town could support. After the eight months of collaborative work, it became clear that the proposed Site is the *only* viable option for locating a Facility that will address the carriers' coverage needs in this part of Westport.

This Application includes reports, site plans, a visibility analysis, and other information detailing the proposed Facility. These reports and supporting documentation contain the relevant site-specific information required by statute and the Council's regulations. This Application also includes a copy of the Council's Community Antenna Television and Telecommunication Facilities Application Guide with references to this Application, attached as Exhibit A.

## List of Attachments

- A. Council's Community Antenna Television and Telecommunication Facilities Application Guide
- B. Certificate of Service of Application on Government Officials; and List of Officials Served
- C. Legal Notice published in *Westport News*
- D. Notice to Landowners; List of Abutting Landowners; Certificate of Service
- E. Radio Frequency Engineering Report with Propagation Plots Attached
- F. Site Search Summary, Map of Rejected Sites, and 4-Mile Tower Map with Table
- G. Project Plans
- H. Visibility Assessment
- I. National Environmental Policy Act (NEPA) Report
- J. Power Density Report
- K. Avian Resources Evaluation
- L. Wetlands Report
- M. Correspondence with the Town of Westport
- N. Federal Aviation Administration Report
- O. Redacted Lease
- P. Aerial Photograph
- Q. Schools and Daycares Map
- R. Affidavit of Publication for Public Meeting
- S. Balloon Float Affidavit
- T. Westport Site Location Map U.S.G.S.

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY TARPON TOWERS II, LLC  
AND NEW CINGULAR WIRELESS PCS, LLC  
FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED  
FOR A TELECOMMUNICATIONS FACILITY  
AT 92 GREENS FARMS ROAD IN THE  
TOWN OF WESTPORT, CONNECTICUT

DOCKET NO. \_\_\_\_\_

Date: MAY 26, 2022

**APPLICATION FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED**

**I. INTRODUCTION**

**A. Authority and Purpose**

Pursuant to Connecticut General Statutes §§ 16-50g, *et seq.* and §§ 16-50j-1, *et seq.* of the Regulations of Connecticut State Agencies, Applicants New Cingular Wireless PCS, LLC (“AT&T”) and Tarpon Towers II, LLC (“Tarpon”) (AT&T and Tarpon are collectively referred to as the “Applicants”) submit an application and supporting documentation (collectively “Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, maintenance and operation of a wireless telecommunications facility (“Facility”) at 92 Greens Farms Road in the Town of Westport (the “Property” or the “Site”). Cellco Partnership, d/b/a Verizon Wireless (“Verizon”) also will be a tenant on the Facility and will intervene in this proceeding.

**B. The Applicants**

AT&T is a Delaware limited liability company with an office at 84 Deerfield Lane, Meriden, Connecticut 06450. Tarpon is a Delaware limited liability company with an office at 8916 77<sup>th</sup> Terrace East, Suite 103, Lakewood Ranch, Florida 3402. AT&T and Tarpon will be the Certificate Holders and will construct and maintain the Facility accordingly.

Communications regarding the Application should be to the attorneys for AT&T:

Cuddy & Feder LLP  
445 Hamilton Avenue, 14<sup>th</sup> Floor  
White Plains, NY 10601  
(914) 761-1300

Attention: Lucia Chiocchio, Esq.  
Kristen Motel, Esq.

and to the attorneys for Tarpon:

Cohen and Wolf, P.C.  
1115 Broad Street  
Bridgeport, CT 06604  
(203) 368-0211

Attention: David A. Ball, Esq.  
Philip C. Pires, Esq.

**C. Application Fee**

The estimated construction cost for the Facility is \$325,000.00. Therefore, pursuant to § 16-50v-1a(b) of the Regulations of Connecticut State Agencies, a check made payable to the Council in the amount of \$1,250 accompanies this Application.

**D. Compliance with Connecticut General Statutes § 16-50/ (c)**

The Applicants are not engaged in generating electric power in the State of Connecticut; thus, the proposed Facility is not subject to Connecticut General Statutes § 16-50r. The proposed Facility has not been identified in any annual forecast reports and, therefore, is not subject to Connecticut General Statutes § 16-50/ (c).

**II. SERVICE AND NOTICE REQUIRED BY CONNECTICUT GENERAL STATUTES § 16-50/ (b)**

Pursuant to Connecticut General Statutes § 16-50/ (b), copies of this Application have been sent to municipal, regional, state, and federal officials. A certificate of service, along with a list of the parties served with a copy of the Application, is attached hereto as Exhibit B. Pursuant to §16-50/ (b), notice of the Applicants' intent to file this Application was published on two occasions in *Westport News* (on May 13, 2022 and May 20, 2022), which is the newspaper in which Town of Westport Planning and Zoning Commission notices are published. A copy of the legal notice is attached hereto as Exhibit C. Finally, pursuant to § 16-50/ (b), notices were sent to each person appearing of record as the owner of real property abutting the Property. Certification of such notice, a sample notice letter, and the list of property owners to whom the notice was mailed are included in Exhibit D.

**III. PROPOSED FACILITY**

**A. Facility Design**

This section will provide an overview and general description of the proposed Facility.

The Property is an approximately 1.99-acre parcel of property located at 92 Greens Farms Road in Westport with a zoning designation Residence AA. The Property is presently used as a single-family home with a portion of the property along Interstate 95 that remains undeveloped. The Site is situated on the east side of Hillspoint Road (and the Hillspoint Road Interstate 95 overpass), to the south side of Greens Farms Road, with Interstate 95 directly to the south.

The Applicants are proposing to construct a telecommunications facility consisting of a 124'-tall monopole with AT&T and Verizon equipment and antennas, situated within a 35' x 64' fenced equipment compound within a 2500 square foot leased area. A 25'-wide access and utility easement originating off Greens Farms Road would provide the Site with underground utilities and vehicular access. The vehicular access would be over a 12' wide gravel driveway within the 25' wide easement. The antennas affixed to the top of the monopole will consist of AT&T panel antennas, mounted in three sectors, at a centerline height of 120' and Verizon panel antennas, mounted in three sectors, at a centerline height of 110'.

**B. Coverage to be Achieved**

AT&T and Verizon have identified significant coverage deficiencies in their existing wireless communications networks along Interstate 95, Greens Farms Road, Hillspoint Road and the neighboring areas of Westport. The proposed Facility will provide necessary in-building residential and in-vehicle coverage (including vehicles on Interstate 95) if they are permitted to locate at the 120' and 110' levels, respectively. AT&T and Verizon's locations at the 120' and 110' levels, respectively, will provide much-needed coverage in the area within the proposed coverage footprint. With the development of the proposed Facility, residential customers would have reliable in-vehicle and in-building coverage for their voice and data needs as well as reliable coverage for E-911 services.

Exhibit E of this Application includes an RF Report commissioned by AT&T containing AT&T propagation plots and separate propagation plots prepared by Verizon that collectively depict (1) coverage from existing and approved surrounding sites, and (2) coverage from the proposed Site in conjunction with existing and approved sites.

Together, these propagation plots demonstrate AT&T's need and Verizon's need for a site in the area of the proposed Facility, and the effectiveness of the proposed Facility in meeting the need for wireless service in this area of Westport.

#### **IV. STATEMENT OF NEED AND BENEFIT**

##### **A. Statement of Need**

###### **1. United States Policy & Law**

The laws and policies of the United States aim to maximize nationwide wireless access and foster wireless network growth. The United States Congress first set forth a regulatory structure for wireless telecommunications in the Telecommunications Act of 1996 (the "Telecommunications Act"). Aimed at increasing market competition amongst service providers, the Telecommunications Act encouraged "the rapid deployment of new telecommunications technologies."<sup>1</sup> The Telecommunications Act substantially increased public access to wireless services by removing barriers to provider-competition, promoting universal service at affordable rates and in all areas of the United States, and enhancing the interconnectivity of users and vendors in light of the Telecommunications Act's proposed changes. Thus, the Telecommunications Act accelerated the process of making wireless services available nationwide for nearly all individuals.

Following the regulatory changes under the Telecommunications Act, Congress passed the Wireless Communications and Public Safety Act of 1999 (the "Public Safety Act"), designating 9-1-1 as the universal emergency assistance number for both landline

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

and wireless telephone service.<sup>2</sup> The express findings of Congress as stated in the Public Safety Act emphasize the nexus between access to wireless communication and public safety:

Emerging technologies can be a critical component of the end-to-end communications infrastructure connecting the public with emergency medical service providers and emergency dispatch providers, public safety, fire service and law enforcement officials, and hospital emergency and trauma care facilities, to reduce emergency response times and provide appropriate care.<sup>3</sup>

The emphasis on accessibility found in the Telecommunications Act coupled with the promotion of wireless use to enhance public safety reflects the United States government's ongoing commitment to maximizing the vast potential of wireless services.

Continuing its efforts to utilize wireless services as a means of enhancing public safety, Congress subsequently passed the New and Emerging Technologies 911 Improvement Act of 2008 (the "NET 911 Act"). The NET 911 Act sought to accelerate a country-wide transition to a national IP-enabled emergency network and improve existing emergency services for individuals with disabilities.<sup>4</sup> Thus, Congressional implementation of the Public Safety Act and the NET 911 Act represent the federal government's growing awareness of how wireless telecommunications not only support economic growth but also create safer municipalities.

The United States has continued to acknowledge the importance of maximizing access to wireless services. The American Recovery and Reinvestment Act of 2009 (the "Recovery Act") provided \$7.2 billion to increase broadband access throughout the United

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<sup>2</sup> Wireless Communications and Public Safety Act, Pub. L. No. 106-81, §2(a)(3), 113 Stat. 1286-87 (1999).

<sup>3</sup> *Id.* at 1287.

<sup>4</sup> New and Emerging Technologies 911 Improvement Act of 2008, 47 U.S.C. §615(a)-1.

States.<sup>5</sup> The Recovery Act also established the Broadband Technology Opportunities Program, awarding grants to enhance community broadband infrastructure, upgrade or construct public computer centers, and increase broadband access in areas that traditionally underutilized broadband services.<sup>6</sup> In 2010, the Federal Communications Commission developed a National Broadband Plan (the “NBP,” or the “Plan”) under the direction of Congress, setting forth strategic initiatives for maximizing broadband access for every American. The Executive Summary of the NBP states the express goal of the Plan:

[M]aximizing use of broadband to advance consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes. [Internal quotation marks omitted].<sup>7</sup>

The NBP establishes policies for innovation, investment, and the utilization of broadband in specific areas such as health care, education, energy, and public safety. By addressing these various needs, the comprehensive framework of the NBP recognizes that “the development of electricity, telephone, radio and television transformed the United States and, in turn, helped us transform the world [...] [b]roadband will be just as transformative.”<sup>8</sup> To implement the proposals contained in the NBP, the FCC established the Broadband Acceleration Initiative (the “Initiative”), to “work inside the FCC, with its partners in state and local governments, and in the private sector to reduce barriers to

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<sup>5</sup> National Telecommunications and Information Administration, United States Dept. of Commerce. *Broadband Technology Opportunities Program (BTOP): About*, <http://www2.ntia.doc.gov/about> (last visited July 30, 2013).

<sup>6</sup> *Id.*

<sup>7</sup> Federal Communications Commission, *National Broadband Plan*, ix (July 20, 2013), <http://download.broadband.gov/plan/national-broadband-plan-executive-summary.pdf>

<sup>8</sup> *Id.* at 21.

broadband deployment.”<sup>9</sup> Through the Initiative, the FCC committed to voting on a Notice of Inquiry to collect information on existing barriers to broadband access.<sup>10</sup> Following through on the agenda set forth in the Initiative, the FCC published a Notice of Inquiry in April 2011 to better understand how the FCC and local municipalities should work together to achieve uniform, nationwide, broadband access for all:

This Notice is intended to update our understanding of current rights of way and wireless facilities siting policies, assess the extent and impact of challenges related to these matters, and develop a record on potential solutions to these challenges.<sup>11</sup>

Echoing the charge of the FCC found in the Telecommunications Act, FCC Chairman Julius Genachowski’s concluding statements in the Notice of Inquiry stressed the ongoing duty of the FCC under the Telecommunications Act to make available broadband services for all individuals, and that “[t]he Broadband Acceleration Initiative, and our actions today, are central to carrying out that duty.”<sup>12</sup>

In June 2012, President Obama signed an executive order aimed at accelerating the deployment of broadband on federal lands and reiterating the importance of uniform access to broadband and other wireless services, recognizing the need for improved broadband access across the United States:

Broadband access is essential to the Nation’s global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability.<sup>13</sup>

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<sup>9</sup> Federal Communications Commission: *The FCC’s Broadband Acceleration Initiative*, (Feb. 9, 2011), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-304571A2.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304571A2.doc)

<sup>10</sup> *Id.*

<sup>11</sup> Federal Communications Commission: Notice of Inquiry 11-51, WC Docket No. 11-59 (Apr. 7, 2011), 5.

<sup>12</sup> *Id.* at 21.

<sup>13</sup> Exec. Order 13616, 77 Fed. Reg 36,903 (Jun. 20, 2012).

Despite these efforts from the White House and Congress, the FCC's 14th Broadband Progress Report (the "Report") confirms that the FCC must continue its efforts to close the "digital divide" and extend the reach of broadband deployment to all Americans. The Report states that "Section 706(a) mandates that we continue to promote deployment of advanced telecommunications capacity to all Americans, and even though 'current data continue to demonstrate significant ongoing progress, it remains the case that rural and Tribal areas continue to lag behind in broadband deployment.'"<sup>14</sup>

The FCC's Declaratory Ruling interpreting §332(c)(7)(b) of the Telecommunications Act established specific time limits for decisions on land use and zoning permit applications, which supports the public need for timely deployment of wireless development.<sup>15</sup> The Middle Class Tax Relief and Job Creation Act of 2012 (Section 6409(a)) emphasized the critical nature of the timely deployment of wireless infrastructure to public safety and the economy by preempting a discretionary review process for eligible modifications of existing wireless towers of existing base stations.<sup>16</sup> More recently, in 2018, the FCC adopted two separate orders incorporating several declaratory rulings and a set of new regulations to specifically address various areas of state and municipal oversight of wireless facility siting including towers and small cells.<sup>17</sup> The first order prohibits any actual or de facto moratoria on the siting of wireless facilities.

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<sup>14</sup> Federal Communications Commission, FCC 21-18A1, Fourteenth Broadband Progress Report, at 4. (2012).

<sup>15</sup> WT Docket No. 08-165-Declaratory Ruling on Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring at Variance ("Declaratory Ruling").

<sup>16</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §6409 (2012), available at <http://gpo.gov/fdsys/pkg/BILLS-112hr3630enr/pdf/BILLS-112hr3630enr.pdf>; see also H.R. Rep. No. 112-399 at 132-33 (2012)(Conf. Rep.), available at <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt399/pdf/CRPT-112hrt399.pdf>.

<sup>17</sup> WT Docket No. 17-79 – Declaratory Ruling and Third Report and Order, Accelerating Wireless Broadband Deployment<sup>5</sup> by Removing Barriers to Infrastructure Investment.

The second, intended to streamline the siting of 4G LTE and future 5G wireless infrastructure, addressed numerous provisions of the Telecommunications Act and focused on any state or local siting requirements that might materially inhibit the deployment of wireless facilities including small cells. The Trump administration further developed a national strategy for the United States to win the 5G global race and continue American leadership in wireless technology.<sup>18</sup>

## 2. United States Wireless Usage Statistics

Over the past thirty years, wireless communications have revolutionized the way Americans live, work and play. The ability to connect with each other in a mobile environment has proven essential to the public's health, safety, and welfare. According to the CTIA's Annual Survey, Americans used a record 15.7 trillion megabytes of mobile data in 2017, nearly quadrupling since 2014 and representing 40 times the volume used in 2010<sup>19</sup>. An estimated 400.2 million individuals in the United States subscribed to a wireless provider, up from 128.3 million subscribers as of December 2011<sup>20</sup>. The reported increase in annual wireless data traffic grew forty (40) times from 2010 to 2017,<sup>21</sup> and data-only only devices increased by 147% from 2013 to 2017.<sup>22</sup> Emphasizing the need to meet the heightened demand for wireless services, in 2017 the number of cell sites in operation in the United States exceeded 320,000, representing a 52% increase over the last decade.<sup>23</sup> In addition to the vast number of individual wireless subscribers, United

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<sup>18</sup> See <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-developing-sustainable-spectrum-strategy-americas-future/> and <https://www.whitehouse.gov/articles/america-will-win-global-race-5g/>

<sup>19</sup> CTIA Annual "The State of Wireless 2018" available at <https://www.ctia.org/news/the-state-of-wireless-2018>; see also [https://api.ctia.org/wp-content/uploads/2018/07/CTIA\\_ToplineWirelessIndustrySurvey.pdf](https://api.ctia.org/wp-content/uploads/2018/07/CTIA_ToplineWirelessIndustrySurvey.pdf).

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

States households are increasingly dependent on wireless service, with 52.5% of households exclusively wireless.

The number of wireless users is exponentially increasing among the country's teenager and elderly populations as well. In a February 5, 2018 report, Pew Research Center found that 95% of all Americans own a cellphone, with 77% of Americans owning smartphones, compared to just 35% owning smartphones in 2011<sup>24</sup>. The percentage of adults ages 65 and older who reported owning a cellphone of any kind as of November 2016 was 80%, with smartphone ownership increasing by 24% since 2013.<sup>25</sup> By comparison, nearly 95% of American teenagers own a smartphone.<sup>26</sup> Clearly, statistics suggest that the number of mobile phone users is growing across demographic lines.

Wireless services not only enhance the efficiency of personal and business communications but also play a key role in enhancing public safety. Up to 80% of all 9-1-1 calls made each year come from a wireless device.<sup>27</sup> Beginning May 15, 2015, wireless carriers in the United States voluntarily supported Text-to-911, a program that allows users to send text messages to emergency services as an alternative to placing a phone call.<sup>28</sup> A June 2013 study of mobile phone activity by the Pew Research Center indicates that over 30 days, 19% of individuals used their mobile device to get help in an

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<sup>24</sup> See <https://www.pewinternet.org/fact-sheet/mobile/>

<sup>25</sup> Monica Anderson and Andrew Perrin, *Report: Tech Adoption Climbs among Older Adults* (May 17, 2017), See <https://www.pewinternet.org/2017/05/17/technology-use-among-seniors/>

<sup>26</sup> Monica Anderson and JingJing Jiang, *Teens, Social Media and Technology*, May 31, 2018 (Pew Research Center Internet & Technology) (2018); See <https://www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/>

<sup>27</sup> 911 Wireless Service Guide, available at <https://transition.fcc.gov/cgb/consumerfacts/wireless911srvc.pdf>

<sup>28</sup> See *Text-to-911: What you need to know*, available at <https://www.fcc.gov/consumers/guides/what-you-need-to-know-about-text-911>. See also, *Text-to-911 is now available in Connecticut*, available at <https://www.text911ct.org>

emergency.<sup>29</sup> Therefore, maximizing broadband and wireless access not only promotes convenient and efficient personal communication but enhances public safety as well.

Further, wireless services serve an important function in assisting local police, fire, and first responders. The Federal Communications Commission (FCC) and the Federal Emergency Management Agency (FEMA) established the Wireless Emergency Alerts (WEA) system, a national emergency system used for disseminating location-aware emergency text message alerts.<sup>30</sup> The messages distributed through the WEA system include Imminent Threat Alerts, such as notification of man-made or natural disasters, and Amber Alerts, which assist law enforcement in the search and identification of missing children.<sup>31</sup> Reaching nearly 97% of wireless subscribers, the WEA program reflects how wireless technology can be utilized to save lives and promote municipal safety.

### 3. Site Specific Public Need

The Facility proposed in this Application would be an integral component of AT&T's and Verizon's networks in their FCC-licensed areas throughout the state.

To expand and enhance its wireless services throughout New England, AT&T must fill in existing coverage gaps and address capacity, interference, and high-speed broadband issues. As part of this effort, AT&T has determined that significant gaps in service exist in and around sections of the Town of Westport, as more fully set forth in Exhibit E and herein. AT&T currently operates wireless facilities similar to the proposed Facility within Westport and the surrounding municipalities. Due in large part to the

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<sup>29</sup> Joanna Brenner, *Pew Internet: Mobile*, Pew Internet & American Life Project (June 6, 2013). <http://pewinternet.org/Commentary/2012/February/Pew-Internet-Mobile.aspx> (last visited July 30, 2013).

<sup>30</sup> For more on the WEA program, see CTIA: *Wireless Emergency Alerts on Your Mobile Device* <https://www.ctia.org/consumer-resources/wireless-emergency-alerts> (last visited June 26, 2019).

<sup>31</sup> *Id.*

distances between the existing sites, the intervening topography, and volume of user traffic in the area, these existing facilities do not provide sufficient coverage to portions of Westport. Specifically, AT&T determined that much of south-west Westport is without reliable service, including, but not limited to, the following areas: Interstate-95; Greens Farms Road; Hillspoint Road; and the surrounding roads, businesses, and neighborhoods in the proximity of the proposed Facility and the above-mentioned roads.

The plots included as attachments to Exhibit E show coverage based on the minimum required signal strength needed to support reliable 4G LTE service in this area. All other areas (depicted in white) fall within coverage areas characterized by poor voice and data quality, slow data speeds, latency, and the substantial likelihood of unreliable service. Attachment 1 to Exhibit E shows the deficient areas of 700 MHz coverage are defined by the unshaded or “white” areas. As shown in this plot, the surrounding AT&T macro-sites are unable to provide adequate coverage to Westport. Attachment 2 to Exhibit E shows the composite coverage with the proposed Facility and demonstrates that the proposed Facility will provide coverage improvement at the 700 MHz layer in the areas of Interstate-95, Greens Farms Road, and Hillspoint Road. Moreover, 1900 additional residents within the surrounding area at the 700 MHz frequency will receive improved coverage, along with improvements to the surrounding roads, neighborhoods, and business areas within the proximity of the proposed site and the above-mentioned roadways. Without the installation of the proposed site, AT&T will be unable to improve and expand its existing 4G LTE wireless communication services in this area of Westport. See Exhibit E at p. 6.

Exhibit E also contains propagation plots showing the existing coverage of Verizon's network and the improvements that will be realized due to the proposed Facility.

## **B. Technological Alternatives**

The FCC licenses granted to AT&T and Verizon authorize them to provide wireless services in this area of the state through the deployment of a network of wireless transmitting sites. Repeaters, microcell transmitters, distributed antenna systems (DAS), and other types of transmitting technologies are not a practicable or feasible means to providing service within the service area for this site. These technologies are better suited for specifically defined areas, such as commercial buildings, shopping malls, and tunnels, or to address capacity. Ensuring reliable wireless services in this area of Westport requires a tower site that can provide reliable service in this critical location. There are no equally effective technological alternatives to the construction of the proposed Facility for AT&T and Verizon to provide reliable personal wireless services in this area of Connecticut.

## **V. SITE SELECTION AND TOWER SHARING**

### **A. Site Selection**

Tarpon is a wireless infrastructure provider that uses its knowledge of the wireless carriers' networks and/or specific information from the individual carriers to develop new wireless facilities where a need has been demonstrated. It is only when it is clear that a new tower facility will be required to provide coverage and reliable service that Tarpon pursues a site search for a new tower. In performing its site search, Tarpon consults with wireless carrier radio frequency engineers to identify geographic areas where a new tower

facility will be required for the provision of coverage and/or capacity in the carriers' networks. In this case, AT&T and Verizon identified a need for wireless coverage in this area of Westport and agreed to support an application by Tarpon to construct a new facility in this location to provide the coverage required, with AT&T serving as a co-applicant with Tarpon.

AT&T conducted its own site search in the area and identified no existing structures or reasonable location sites for a new tower facility. In conducting its site search, AT&T seeks to avoid the unnecessary proliferation of towers and to reduce the potential adverse environmental impacts of a new facility. In this area of Westport, there are no known existing structures suitable for co-location and the provision of reliable service to the public.

Only after determining that no existing suitable facilities or structures could be used to provide reliable coverage in this area, a search for tower sites was conducted. The search included independent reviews by Tarpon and AT&T and fieldwork conducted by consultants for both entities.

The map of existing facilities within a four-mile radius with table dated July 2021, along with the site selection narrative and map of rejected sites contained in Exhibit F, provide a thorough explanation of the Applicants' methodology for conducting site searches, the actual search for potential sites in the area, the locations reviewed during the Applicants' search, and the reasons for elimination from consideration of all but the Property.

**B. Tower Sharing**

To promote the sharing of wireless facilities in the Town, the Applicants propose to construct a facility that can accommodate AT&T, Verizon, and two future wireless carriers. The Facility would also be able to accommodate municipal emergency communications equipment at no cost to the Town. Details of the design are contained in Exhibit G.

**VI. ENVIRONMENTAL COMPATIBILITY**

Pursuant to Connecticut General Statutes § 16-50p, the Council is required to find and determine as part of the Application process any probable environmental impact of the Facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water purity and fish and wildlife. As demonstrated in this Application and the accompanying attachments and documentation, the Facility would not have a significant adverse environmental impact, and/or any such effects are unavoidable in this part of the State to provide reliable service to the public.

**A. Visual Assessment**

The visual impact of the Facility would vary from different locations around the Facility depending upon factors such as vegetation, topography, distance from the Facility, and the location of structures around the Facility.

Tarpon retained visibility experts, All-Points Technology Corporation, P.C. (“APT”), to prepare the Visual Assessment & Photo-Simulations for the Facility. See Exhibit H, *Visual & Photo-Simulations prepared in March 2022 by All-Points Technology Corporation, P.C.* The Visual Assessment includes a computer-based, predictive

viewshed model, which has proven to depict accurately the potential impact of the Facility from within a two-mile radius (the “Study Area”).

APT used a combination of a predictive computer model, in-field analysis, and a review of various data sources to evaluate the visibility associated with the Facility on both a quantitative and qualitative basis. The predictive model provides a measurable assessment of visibility throughout the entire Study Area, including private properties and other areas inaccessible for direct observations.

The in-field analyses consisted of a balloon test completed on March 2, 2022 and field reconnaissance of the area to record existing conditions, verify results of the predictive model, inventory seasonal and year-round view locations, and provide photographic documentation from publicly accessible areas. The balloon test consisted of raising a brightly-colored, approximately four-foot diameter, helium-filled balloon tethered to a string at a height of ±124 feet AGL at the location of the proposed Facility. APT conducted a study area reconnaissance by driving along local and State roads and traveling along other publicly accessible locations to document and inventory where the balloon could be seen above and through the tree canopy and other visual obstructions. Visual observations from the reconnaissance were also used to evaluate the results of the preliminary visibility mapping and to identify any discrepancies in the initial modeling.

As presented in the viewshed maps attached to the Visibility Analysis, year-round views of the Facility would be primarily limited to immediately surrounding areas along Greens Farms Road and the Interstate 95/Metro-North transportation/utility corridor, as well as coastline areas west of Sherwood Island State Park, and areas of open water on Sherwood Mill Pond. Views extend westward along Greens Farms Road approximately

0.69-miles (Photo 15) and eastward approximately 0.69-miles (Photo 24) on the Sherwood Island Connector. Year-round views may also extend south/southeastward over Long Island Sound at distances more than a mile away. Distant views would be limited to the top of the monopole above the tree line, beyond the transmission line structures, similar to conditions depicted in Photo 22 in Exhibit H. Seasonal visibility may extend approximately 0.23-miles northwestward from the Facility (Photo 10) and approximately 0.16-miles northeastward from the Facility (Photo 2), and may potentially reach portions of Clapboard Hill approximately one mile to the east. No views are anticipated from State Route 136, which is a State-designated Scenic Road in the western portion of the Study Area (Photos 16, 17, 18, and 19 in Exhibit H).

The predicted year-round visibility of the proposed Facility is estimated to include approximately 439 acres, 408 acres of which occur over open water and associated tidal marsh areas. The predicted seasonal visibility is estimated to include an additional  $\pm 144$  acres. Collectively, the total  $\pm 538$  acres of visibility represent only  $\pm 7.25\%$  of the 8,042-acre Study Area. Approximately 75.84% of predicted visibility occurs over open water and the associated tidal marsh areas.

No schools or commercial daycare centers are located within 250 feet of the Facility. Saugatuck Elementary School is located approximately 1.32 miles northwest of the Site at 170 Riverside Avenue in Westport. No visibility is predicted from or in the vicinity of the school. Children's Community Development Center is located approximately 0.23 miles north-northwest of the Site at 90 Hillspoint Road in Westport. No visibility is predicted from or in the vicinity of the daycare center.

Weather permitting, and if allowed under COVID-19 protocols, the Applicants may be asked to raise a balloon with a diameter of at least three (3) feet at the Facility on the day of the Council's hearing on this Application, or at a time otherwise specified by the Council. In lieu of the balloon float, the Applicants may perform a virtual site visit.

**B. Solicitation of State and Federal Agency Comments**

On behalf of Tarpon, APT submitted a request for review and comment for the Facility to the State Historic Preservation Office (the "SHPO"). Included in that submission to the SHPO were project details, copies of consultant correspondence to date, and the results of APT's evaluation of the potential effects of the project on historic and archaeological resources. APT also obtained the maps from the database of the Connecticut Department of Energy & Environmental Protection ("CT DEEP").

The SHPO noted that five previously identified archaeological sites are located within 0.5 miles of the project area, however, none of those sites will be impacted by the project. See Letter from SHPO dated December 13, 2021 contained in NEPA Report attached hereto as Exhibit I. The SHPO further stated that soil profiles for the project area have a "low potential to contain intact archeological deposits," and that a pedestrian survey further revealed that the project area already has been "substantially disturbed by construction of Interstate 95 and Old Green Farms Road." See Letter from SHPO dated December 13, 2021 contained in NEPA Report attached hereto as Exhibit I.

The SHPO "determined that the proposed undertaking will have no adverse effects to sites listed on or eligible for listing on the National Register of Historic Places, with the following conditions: 1) The antennae, wires, mounts, and associated equipment will be designed, painted to match adjacent materials, and installed to be as non-visible as

possible; and 2) if not in use for six consecutive months, the antennae, mounts, and equipment shall be removed by the telecommunications facility owner. This removal shall occur within 90 days of the end of such six months.” See Letter from SHPO dated December 13, 2021 contained in NEPA Report attached hereto as Exhibit I. The Applicants are prepared to fully comply with these conditions.

On behalf of Tarpon, APT also consulted with the United States Fish and Wildlife Service (“USFW”) and reviewed the Connecticut Department of Energy & Environmental Protection (“CTDEEP”) Wildlife Division Natural Diversity Data Base (“NDDB”) to determine if rare, threatened, or endangered species or designated critical habitat may be present in the project area. Based on APT’s review, APT identified two federally-listed species (i.e., listed under the Endangered Species Act) that are known to occur in the vicinity of the Site: the Northern long-eared bat (*Myotis septentrionalis*) (“NLEB”) and Red Knot (*Calidris canutus rufa*). The proposed Facility would be located in an undeveloped forested area on a developed residential parcel surrounded by residential development and the Interstate-95 corridor. Some limited tree clearing would be required for the proposed Facility. However, a review of the NDDB’s NLEB habitat map revealed that the proposed Facility is not within 150 feet of a known occupied NLEB maternity roost tree and is not within 0.25 miles of a known NLEB hibernaculum. The nearest NLEB habitat resource to the proposed Facility is located ±15.1 miles to the west in Greenwich.

Moreover, the proposed Facility is within inland terrestrial and wetland forested habitats ±0.25 mile north of the nearest coastline habitat potentially supporting Red Knot habitat. Because no suitable feeding or roosting habitat for Red Knot is supported within

the Facility area, no effect on this species is anticipated. See Biological Assessment Report contained in Exhibit I.

Based on the information described herein and contained in Exhibit I, the proposed Facility is not anticipated to adversely impact any federal or state threatened, endangered, or species of special concern.

### **C. MPE Limits/Power Density Analysis**

In August 1996, the FCC adopted a standard for exposure to Radio Frequency ("RF") emissions from telecommunications facilities like the Facility proposed in this Application. To ensure compliance with applicable standards, AT&T retained C Squared Systems, LLC to perform maximum power density calculations for the Facility assuming that the antennas are operating at 100% capacity and power and that all antenna channels are transmitting simultaneously.

The resulting power density for AT&T's operations would be approximately 33.58% percent of the applicable Maximum Permissible Exposure (MPE) standards. A copy of the power density calculation report for the Facility is attached hereto as Exhibit J. This calculation does not take into account obstructions, such as trees and buildings, that would normally attenuate the signal. The calculations assume even terrain in the area of study and do not consider actual terrain elevations which also could attenuate the signal. As a result, the predicted signal levels reported by C Squared Systems, LLC are much higher than the actual signal levels of the Facility will be.

#### **D. Other Environmental Factors**

The Facility would be unmanned, requiring infrequent monthly maintenance visits by AT&T and Verizon that would last approximately one hour. The equipment located at the Facility would be monitored 24 hours a day, 7 days a week from a remote location. The Facility would not require a water supply or wastewater utilities. No outdoor storage or solid waste receptacles would be needed, and the Facility would not create or emit any smoke, gas, dust, or other air contaminants, noise, odors, or vibrations other than the installed heating and ventilation equipment. Temporary power outages could require the limited use of emergency generators on site and provisions have been made for a permanent, self-contained, on-site natural gas back-up generator. The construction and operation of the proposed Facility would have no significant impact on air, water, or noise quality.

Tarpon retained APT to evaluate the Facility under the FCC's regulations implementing the National Environmental Policy Act of 1969 ("NEPA"). A copy of the NEPA Report dated March 4, 2022, is attached hereto as Exhibit I. In the NEPA Report, APT concludes:

- The proposed Facility will not be located in an area designated as a wilderness area or a wildlife preserve.
- The Facility will not affect federally listed threatened or endangered species or designated critical habitats.
- The Facility will not affect districts, sites, buildings, structures, or objects of significant American history, architecture, archaeology, engineering, or culture, that are listed, or eligible for listing, in the National Register of Historic Places.

- The Facility will not affect an Indian religious site. APT consulted with eight Native American Indian tribes – the Bad River Band of Lake Superior Tribe of Chippewa Indians, Delaware Nation, Delaware Tribe of Indians of Oklahoma, Lac du Flambeau Band of Lake Superior Chippewa Indians, Mashantucket Pequot Tribe, Mohegan Indian Tribe, Narragansett Indian Tribe, and Red Cliff Band of Superior Chippewa Indians of Wisconsin.

APT received no reply from the Bad River Band of Lake Superior Tribe of Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Narragansett Indian Tribe, Delaware Tribe of Indians of Oklahoma, and Red Cliff Band of Superior Chippewa Indians of Wisconsin. Delaware Nation replied, indicating that the proposed project does not endanger cultural or religious sites of interest to the Delaware Nation. Lac du Flambeau Band of Lake Superior Chippewa Indians replied, indicating that they have no objections to the project. Mashantucket Pequot Tribe replied, stating that there will not be any significant impact on any religious or cultural properties of the Mashantucket Pequot Tribe. Mohegan Indian Tribe responded, indicating the proposed project should have no adverse effect on historic properties or properties of traditional religious and cultural significance to the Mohegan Indian Tribe.

- The Facility will not be located in 100-year floodplains.
- The construction of the Facility will not involve a significant change in surface features (e.g., wetlands fill, water diversion, or deforestation). Specifically, the proposed development will not result in either temporary or permanent direct impacts to any wetland resource area. Tarpon retained APT to conduct a wetlands inspection and delineation on the Property. Two wetland areas were identified and

delineated near the project area consisting of an isolated depressional wetland system (Wetland 1) and an intermittent stream system with narrow bordering forested wetlands (Wetland 2). Wetland 1 is a very small, narrow, and isolated wetland feature formed in a small topographic depression. This wetland system exhibits high levels of human disturbance, both historically from the proximate construction of Interstate 95, as well as ongoing disturbances associated with the proximity to this transportation corridor (as evident by disturbed soil profiles, prolific refuse material, and high densities/dominance of invasive plant species). Wetland 2 consists of a channelized intermittent watercourse with narrow bordering forested wetland areas that are seasonally saturated and occasionally flooded. The regulatory boundary of the intermittent stream system generally starts at a 72-inch reinforced concrete pipe culvert with the watercourse flowing to the east, parallel to Interstate 95. This wetland system also exhibits high levels of human disturbance, both historically from the proximate construction of Interstate 95, as well as ongoing disturbances associated with the transportation corridor (as evident by road sand deposition and bank erosion due to flashy hydrology from the highway's stormwater runoff). APT concludes that the proposed Facility will not result in any significant change in surface features.

- The Facility will not utilize high-intensity white lights in a residential neighborhood.

Additionally, the proposed Facility is not anticipated to adversely affect any migratory bird species. In addition, the height would be below 200 feet, would not include guy wires, and would not require lighting. The Site is not located within any Important Bird Area ("IBA") or Waterfowl Focus Area. The closest IBA to the Property is the Nature

Conservancy's Devil's Den Preserve in Weston located about 7.5 miles to the northeast. The nearest Waterfowl Focus Area is located 0.3 miles to the southeast in Westport. In its Avian Resources Evaluation, APT concluded that no migratory bird species are anticipated to be impacted by the proposed Facility. See Avian Resources/Migratory Bird Impact Analysis dated June 23, 2021 attached hereto as Exhibit K.

As a result, the Facility is categorically excluded from any requirement for further environmental review by the FCC in accordance with the NEPA, and no permit is required by the FCC prior to construction of the proposed Facility. See 47 C.F.R. §§ 1.1306(b) and 1.1307(a).

## **VII. CONSISTENCY WITH THE WESTPORT LAND USE REGULATIONS**

The Council Application Guide for Community Antenna Television and Telecommunications Facilities, as amended in July 2012, requires the inclusion of a narrative summary of the project's consistency with the Town's Plan of Conservation and Development (the "Plan"), Zoning Regulations, and Wetlands Regulations as well as a description of planned and existing uses of the site location and surrounding properties.

### **A. Planned and Existing Land Uses**

The Property is approximately 1.99 acres and is zoned Residence AA. The Property is presently used as a single-family home with a portion of the property along Interstate 95 that remains undeveloped. The Applicants are not aware of any confirmed future development plans regarding the Property. The Property is bordered by Interstate 95 to the south and the Hillspoint Road Interstate 95 overpass to the west. The other properties immediately surrounding the Property are zoned Residence AA.

## **B. Westport Plan of Development**

The Westport Plan of Conservation and Development (“Plan”), a copy of which is included in the bulk filing, was effective as of October 2, 2017. The Plan acknowledges that “[t]he availability of utility services such . . . wireless services can influence overall community development.” See Bulk Filing, Plan at p. 119. The Plan further acknowledges that:

With the advent of “smart phones,” people have become even more reliant on wireless services for managing day-to-day aspects of their lives. Some people are even abandoning “land-line” phones and exclusively using cellular phones for communications. This evolution of communications is dependent on the availability of service and system capacity.

See Bulk Filing, Plan at p. 126. The Plan further “recommends that Westport seek to improve the availability and capacity of wireless services in ways that are appropriate and compatible with community character (such as using ‘stealth’ technologies and similar approaches).” See Bulk Filing, Plan at p. 126. The Plan further recites the results of a survey in the Town in which 62% of respondents either agreed or strongly agreed with the statement: “*Westport should encourage improvements in internet speed and cell phone service.*” See Bulk Filing, Plan at p. 126.

The construction of the proposed Facility is consistent with the Plan because it will result in improvements in the availability and capacity of wireless service in the surrounding area.

## **C. Westport Zoning Regulations**

The Property is zoned Residence AA under the Westport Zoning Regulations (the “Regulations”). See Bulk Filing, Zoning Regulations; Zoning Map.

Section 32-16 of the Regulations governs the location of wireless telecommunications service facilities in the Town of Westport. Facilities are generally limited to the following commercial and mixed-use zoning districts: Design Development District (DDD) with a minimum lot size of 10 acres; Business Center District (BCD); Business Preservation District (BPD); Corporate Park District (CPD); General Business District (GBD); Historic Design District (HDD); Highway Service District (HSD); Restricted Business District (RBD); Restricted Office-Retail District (RORD); and Restricted Professional Office District (RPOD). See Bulk Filing, Section 32-16.2 of the Regulations. However, this limitation as to zone does not apply if the service provider can “demonstrate to the P&Z Commission that such a restriction has the effect of prohibiting the provision of a reasonable quality of personal wireless service to the Town of Westport.” See Bulk Filing, Section 32-16.2 of the Regulations. As set forth in Exhibit F (Site Search Summary) and Exhibit E (RF Report and Propagation Plots), this zoning restriction would have the effect of prohibiting the provision of a reasonable quality of personal wireless service in this area of Westport. The proposed Facility is the only suitable location to provide coverage and capacity in this area of Westport. Therefore, the Application is consistent with Section 32-16.2 of the Regulations.

Section 32-16.1.4 articulates a policy to “[e]ncourage the joint use of any new antenna or wireless telecommunication tower.” The proposed Facility furthers this policy because it would allow up to four wireless carriers to utilize the proposed Facility. Therefore, the Application is consistent with this section of the Regulations.

Sections 32-16.2.1 and 32.16.2.2 express a preference for a facility to be located on existing structures, however, the applicant may provide proof that it is not feasible to

locate on an existing structure and then install a tower. As set forth in Exhibit F (Site Search Summary), the proposed Site is the only available location to locate a tower, and there are no existing structures on which the carriers could provide suitable coverage and capacity. Therefore, the Application is consistent with these sections of the Regulations.

Section 32-16.2.3 requires that the applicant submit documentation indicating FCC licensure. The FCC licenses granted to AT&T and Verizon authorize them to provide wireless services in this area of the state through the deployment of a network of wireless transmitting sites. In addition, based on the result of the NEPA Report (Exhibit I), no further approval from the FCC is needed to authorize the proposed Facility. Therefore, the Application is consistent with this section of the Regulations.

Section 32-16.2.4 provides additional siting criteria: 1) no tower shall be located on land designated or deed-restricted as open space; and 2) no tower may be constructed within a mile radius of an existing tower. The proposed Facility would not be located on open space land. The nearest tower is located approximately 1.08 miles away from the proposed Facility at 880 Post Road East, Westport. Therefore, the Application is consistent with this section of the Regulations.

Section 32-16.3.1 requires that towers comply with the setback requirements of the zoning district and that towers may not be located within 50 feet of any residential property line. The nearest residential property line is  $\pm 232$  feet from the proposed tower. Section 12-4 provides that no building or structure may be closer than 30 feet from any street line or 25 feet from any side or rear lot line in the Residence AA District. The proposed tower is  $\pm 35$  feet to the side lot line and  $\pm 232$  to the rear property line, and  $\pm 79$

feet to the street line. Therefore, the Application is consistent with this section of the Regulations.

Section 36-16.4 provides that no tower, including antennas, shall exceed 150 feet in height. Because the proposed Facility will only be 124 feet including antennas, the Application is consistent with this section of the Regulations.

Section 32-16.5.1 provides that accessory equipment to the tower must be housed in a building not to exceed 750 square feet of gross floor area and may not be more than 16' in height. This section also prohibits manned equipment, including a business office, in a residential district. The compound for the proposed Facility will not include manned equipment. The accessory equipment will be located in an equipment cabinet that is 9'-4' by 16' on a steel platform with a canopy, and in a 6' x 6' walk-in cabinet shelter on a 102" by 102" concrete pad. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.6.1 prohibits signs on the facility, except signs that are permitted by Section 33 of the Regulations. The only signs that will be located at the proposed Facility are the following: 1) no trespassing signs; 2) a sign that indicates radiofrequency emissions; and 3) a sign that identifies the owner of the tower, the site identification number, the contact telephone number, and the FCC registration number. These signs are generally consistent with the types of signs that are permitted under Section 33 of the Regulations. Accordingly, the Application is generally consistent with this section of the Regulations.

Section 32-16.6.2 requires that all utilities proposed to serve a tower shall be installed underground. The Application proposes to install all utilities underground, and therefore, the Application is consistent with this section of the Regulations.

Section 32-16.6.3 requires that all towers comply with FCC standards for non-ionizing electromagnetic emissions and be updated as necessary to comply with new scientific findings and associated regulations. As set forth in Exhibit J, the proposed Facility will comply with these FCC standards. Section 32-16.6.3 also provides that all generators and equipment shall comply with all state and local noise and emissions regulations. Westport does not appear to have a local ordinance regulating noise from generators. State regulations provide that in Class A Land Uses (i.e., single-family residential properties) noise levels beyond the property line shall not exceed 55 dBA during the day or 45 dBA at night. The natural gas generator will only run during power outages. If requested by the Council, the Applicants will complete a noise study to evaluate the noise that the natural gas generator will emit during power outages.

Section 32-16.6.4 prohibits the construction of towers on property that is within a Westport Historic District, National Register Historic District, or on any property located on the state or national Register of Historic Places. The Application is consistent with this section of the Regulations because the Property is not within a Westport Historic District, a National Register Historic District, or the state or national Register of Historic Places.

Section 32-16.6.5 requires that any towers shall be camouflaged or painted to reduce visual impact. In Tarpon's experience, a steel tower often has a lesser visual impact than a painted tower because as the tower weathers, the color turns dull grey, which blends well with the natural sky. That being said, if the Council requires, the

Applicants are willing to paint the tower. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.6.6 of the Regulations requires that a fence 8 feet in height shall be required around any tower and any free-standing equipment. The Application proposes a fence that is 8 feet in height. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.6.7 requires landscaping around the fence consisting of a row of evergreen trees that shall be a minimum of six feet in height and shall grow to a minimum of 15 feet in height at maturity. If required by the Council, the Applicants are willing to incorporate a landscaping plan with appropriate screening. Therefore, the Application is consistent with this section of the Regulations.

Section 32-16.6.8 requires that the tower be designed to hold additional equipment, including local emergency services equipment. The proposed Facility will allow AT&T, Verizon, and two additional wireless carriers to locate equipment on the tower. In addition, the Applicants have reserved space for municipal emergency services equipment, if desired by Westport. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.6.9 requires that written notice of a proposed tower must be sent to any neighboring municipality located within 1,500 feet of the tower. There is no other municipality located within 1,500 feet of the proposed Facility, and therefore, the Application is consistent with this section of the Regulations.

Section 32-16.7 requires the applicant for a tower to provide the application materials required under Section 44 of the Regulations. Section 44 requires a GIS

location map, an existing conditions survey, a site plan map, and building plans. Exhibit G to the Application includes detailed project plans, an existing conditions survey, and a site map. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.7.1 requires a description of technological alternatives for the proposed tower and a statement containing the reasons for the choice of the proposed tower. This Application Narrative, along with all of the exhibits to the Application, contains a detailed explanation of the selection of the proposed Facility and includes a description of technological alternatives, all of which are not viable options. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.7.2 requires a statement containing a description of the siting criteria and the process by which other possible sites were considered and eliminated. The Application, and in particular Exhibit F, contains this information, and therefore, the Application is consistent with this section of the Regulations.

Sections 32-16.7.3 and 32-16.7.4 require that the applicant submit photographs showing existing and proposed conditions and depict what can currently be seen, and what will be seen, from any public road and residential area within a one-mile radius. The Application includes a Visual Assessment (Exhibit H), which includes a study area consisting of a two-mile radius. Accordingly, the Application is consistent with these sections of the Regulations.

Section 32-16.7.5 requires that the applicant submit a map depicting the extent of the provider's existing and planned coverage and the service area of the proposed facility. Exhibit E contains an RF Report and propagation plots that show the current coverage

and the coverage that will be achieved by the proposed Facility. Accordingly, the Application is consistent with these sections of the Regulations.

Section 32-16.7.6 includes certain additional requirements that apply only if the facility will provide more than 50% of its coverage to areas outside of Westport. Because the Application will not provide more than 50% of its coverage outside of Westport, this section is not applicable. Accordingly, the Application is consistent with these sections of the Regulations.

Section 32-16.7.7 requires that the application include a map showing that reasonable coverage and capacity is either not already provided in Westport or the potential to provide coverage is not possible by modifying other sites. This information is contained in Exhibit E. Accordingly, the Application is consistent with these sections of the Regulations.

Section 32-16.7.8 requires that the applicant submit a map and a written narrative of a long-range plan for the location and necessity of facilities in Westport, describing existing and proposed coverage areas. This long-range plan shall have a time period of not less than 36 months from the anticipated date of installation. The necessity of the proposed Facility is contained in Exhibit E. Tarpon's lease for the Site will have an initial lease term of 10 years, with three 10-year options to renew. See Exhibit O. The Applicants do not presently plan to develop any additional towers in this area of Westport. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.8 requires the applicant to hire independent consultants approved by the P&Z staff to conduct an independent review of any application for a new tower.

The Applicants will not be hiring independent consultants approved by the P&Z staff; however, the Application will be independently reviewed by the Council's staff members.

Section 32-16.9 requires that an applicant arrange to fly a brightly colored three-foot diameter balloon at the site that is at the maximum height of the proposed installation. The Applicants' Visual Assessment (Exhibit H) included a balloon float that is generally consistent with this requirement.

Section 32-16.10 requires that if the facility is not in use for six months, it shall be removed by the owner within 90 days of the end of the six-month period. If the proposed Facility is not in use for six months, then the Applicants will remove the proposed Facility within 90 days of the end of the six-month period. Accordingly, the Application is consistent with this section of the Regulations.

Section 32-16.11 requires a bond in an amount determined by the Town Engineer at the time of issuance of a zoning permit for the construction of a tower to ensure that removal will be accomplished. The Applicants will not be seeking a zoning permit for the construction of the tower because of the Council's exclusive jurisdiction, but the Applicants will fully comply with all conditions of Council approval, including all requirements imposed by the Council pursuant to a future development and management plan.

Section 32-16.12.1 requires a certificate from a structural engineer licensed in the State of Connecticut confirming that the tower is properly constructed and structurally sound. This information will be confirmed by the Applicants and approved by the Council after the Certificate is issued during the development and management phase of the project. Accordingly, the Application is consistent with this section of the Regulations.

#### **D. Westport Inland Wetlands and Watercourses Regulations**

The Westport Inland Wetlands and Watercourses Regulations (“Wetlands Regulations”) regulate certain activities conducted in or adjacent to wetlands or watercourses as defined therein. See Bulk Filing, Wetlands Regulations, effective August 9, 2004.

The construction of the Facility will not involve a significant change in surface features (e.g., wetlands fill, water diversion, or deforestation). Specifically, the proposed development will not result in either temporary or permanent direct impacts to any wetland resource area. Tarpon retained APT to conduct a wetlands inspection and delineation on the Property. Two wetland areas were identified and delineated near the project area consisting of an isolated depressional wetland system (Wetland 1) and an intermittent stream system with narrow bordering forested wetlands (Wetland 2). Wetland 1 is a very small, narrow, and isolated wetland feature formed in a small topographic depression. This wetland system exhibits high levels of human disturbance, both historically from the proximate construction of Interstate 95, as well as ongoing disturbances associated with the proximity to this transportation corridor (as evident by disturbed soil profiles, prolific refuse material, and high densities/dominance of invasive plant species). Wetland 2 consists of a channelized intermittent watercourse with narrow bordering forested wetland areas that are seasonally saturated and occasionally flooded. The regulatory boundary of the intermittent stream system generally starts at a 72-inch reinforced concrete pipe culvert with the watercourse flowing to the east, parallel to Interstate 95. This wetland system also exhibits high levels of human disturbance, both historically from the proximate construction of Interstate 95, as well as ongoing disturbances associated with

the transportation corridor (as evident by road sand deposition and bank erosion due to flashy hydrology from the highway's stormwater runoff). APT concludes that the proposed Facility will not result in any significant change in surface features.

If this Application is approved, Tarpon will design, install, and maintain sedimentation and soil erosion controls during construction activities in accordance with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control. Further, stormwater generated by the proposed development will be properly handled and treated in accordance with the 2004 Connecticut Stormwater Quality Manual.

Accordingly, the Application is consistent with the Wetlands Regulations.

## **VIII. CONSULTATIONS WITH LOCAL, STATE, AND FEDERAL OFFICIALS**

### **A. Local Consultations**

Connecticut General Statutes § 16-50/(e) requires an applicant to consult with the local municipality in which a proposed facility may be located and with any adjoining municipality having a boundary of 2,500 feet from the proposed facility concerning the proposed and alternate sites of the facility. On August 31, 2021, the Applicants submitted a technical report to the then-First Selectman, Jim Marpe, regarding the Facility. The technical report, a copy of which is being bulk filed with this Application, included specifics about the Property, the Facility, the site selection process, and the environmental effects, if any, of the proposed Facility. A copy of the cover letter to First Selectman Marpe submitted with the technical report is included in Exhibit M.

Shortly after submitting the technical report to the Town, on September 10, 2021, counsel for Tarpon reached out to Attorney Ira Bloom, the Westport Town counsel,

offering to set up a meeting between the Applicants and the Westport First Selectman. On September 24, 2021, the Applicants attended a meeting in Westport Town Hall with then-First Selectman Marpe and a number of Town representatives. At the meeting the parties shared an open discussion about the proposed Site, and the Town raised a number of other potential locations in the vicinity, including commercial property situated at 55 Greens Farms Road, the Assumption Cemetery located at 57 Greens Farms Road, and property owned by CDOT near Interstate-95. Both sides agreed to use their contacts to try to facilitate discussions with these property owners.

With the assistance of First Selectman Marpe, the Town and the Applicants were able to set up a meeting with an agent for the property owner at 55 Greens Farms Road, a commercial office park. The parties met at 55 Greens Farms Road on October 14, 2021 and identified two potential locations for a tower. Following the meeting, Tarpon confirmed with the carriers that both locations on 55 Greens Farms Road would work from an RF perspective. Tarpon then engaged directly with the property owner's agent to discuss potential lease terms. In addition, in November 2021 Tarpon commissioned APT to create photo simulations of a potential tower at this property.

Months of discussions with the property owner ensued, and on December 21, 2021, the owner's agent indicated that the only location at 55 Greens Farms Road that the owner would be willing to lease was in the back of the property (bordering the Assumption Cemetery). Once that location was identified, APT prepared a Wetlands Inspection Map that depicted the close proximity of numerous wetlands to the proposed tower location. The Applicants were still able to identify a potential tower location on 55 Greens Farms Road that was not within a designated wetland area, but it was clear that any access road

would require the crossing of wetlands. As a result, this potential tower location would result in a direct impact to wetlands. It would also require the removal of numerous trees to develop the site.

On January 28, 2022, the Town's Conservation Committee conducted a site visit at 55 Greens Farms Road to evaluate the potential location. At the Town's request, the Applicants' wetlands consultant attended the site visit, and the Applicants engaged a surveyor to stake out the location of the proposed access road if the site was viable. In addition, the Applicants agreed to a second site visit on the same day, with the Conservation Commission, at the proposed Site, 92 Greens Farms Road.

On January 31, 2022, the Town's Conservation Commission held a special meeting for the purpose of discussing the proposed Site, as well as the property at 55 Greens Farms Road. The Applicants' wetlands consultant attended the meeting and, in response to questioning from Commission members, stated that there would be significant impact on wetlands at 55 Greens Farms Road, whereas there would be no direct impact to wetlands at the proposed Site, 92 Greens Farms Road. The vast majority of residents who attended the meeting spoke out against locating a tower at 55 Greens Farms Road, and a number of Conservation Commission members also expressed their concern about a tower on 55 Greens Farms Road due to the impact on wetlands. In addition, the chair of the Conservation Commission noted that, by contrast, a tower at 92 Greens Farms Road would have "zero impact to the wetlands." See minutes of Westport Conservation Commission Special Meeting dated January 31, 2022 attached in Exhibit M.

Although the Town indicated its desire to have a public information session, it requested that the Applicants wait until after the November elections, so that the new First

Selectman would be in office. The Applicants agreed to wait until after the elections, and eventually participated in a public information session on a date the Town had proposed, February 8, 2022. The Applicants agreed with the Town that they would present a summary of both the proposed Site at 92 Greens Farms Road, and the potential alternative site at 55 Greens Farms Road. However, in part due to neighborhood opposition, on February 2, 2022, the owner at 55 Greens Farms Road notified the Applicants that it was no longer interested in having a cell tower on the property, and it would not agree to enter into any lease for that purpose. Accordingly, at the February 8<sup>th</sup> public information session, the Applicants presented only the proposed Site at 92 Greens Farms Road.

At the Applicants' request, the Town continued to suggest potential alternative locations. One property examined was owned by Eversource and is the location of the Compo Substation on 197 Compo Road South. The Applicants continued to explore the Assumption Cemetery located at 57 Greens Farms Road. The Town asked the Applicants to review the office complex at 200 Nyala Farms. And the Town again raised the possibility of property owned by CDOT on Hales Road.

The Applicants pursued all of these sites. On March 2, 2022, Eversource notified Tarpon that its property at 197 Compo Road South did not contain sufficient space to accommodate a cell tower and compound. On March 1, 2022, the Assumption Cemetery notified Tarpon that it was not interested in leasing its property for a cell tower. AT&T performed an RF analysis of the office complex at Nyala Farms, but because of the distance from the needed coverage area, this property did not meet AT&T's coverage objectives.

With respect to the CDOT property, Tarpon sent multiple e-mails to CDOT but did not receive a response for months. The Town also reached out directly to CDOT and was able to receive a response. Accordingly on March 31, 2022, Tarpon e-mailed CDOT requesting a meeting to discuss CDOT property as a potential site for a cell tower. CDOT did not respond. Counsel for Tarpon sent additional e-mails to CDOT on April 8, 2022 (twice), and April 13, 2022, each time requesting a meeting with CDOT. CDOT did not respond to any of these e-mails. On April 26, 2022, counsel for Tarpon sent a 4<sup>th</sup> e-mail to CDOT, and the next day CDOT finally replied by e-mail indicating that it was going to have an internal meeting on May 2, 2022 and would update counsel after that meeting. When CDOT did not provide that update, on May 3, 2022, Tarpon's counsel sent yet another e-mail to CDOT asking for a meeting. CDOT did not respond.

Instead, CDOT e-mailed counsel for the Town and requested a private discussion with the Town's attorneys. In that meeting, on May 5, 2022, CDOT indicated that it did not have the resources to begin the process of licensing its land for a cell tower, and that it had other projects that were of greater priority. The Town's counsel relayed this discussion to Tarpon's counsel, and it was then apparent to the Applicants that the CDOT property was not a viable option.

The eight month municipal consultation process was characterized by cooperation and good faith between the Town and the Applicants. Every property suggested by the Town was fully vetted by the Applicants, and at the end of the process it was clear that the proposed Site at 92 Greens Farms Road was the only available site that would meet the carriers' coverage objectives. Accordingly, the Applicants notified the Town that they were moving forward with this Application.

## **B. Consultations with State Officials**

As noted in Section VII.B of this Application, Tarpon consulted with the SHPO and obtained CTDEEP mapping from the CTDEEP's database in the course of its NEPA survey. As indicated in Section VII.B, the SHPO found no adverse impact. Copies of the correspondence with SHPO are included in the NEPA Report attached hereto as Exhibit I.

## **C. Consultation with Federal Agencies**

Tarpon received a report from the Federal Aviation Administration ("FAA") for the Facility, which is attached hereto as Exhibit N. The results indicate that the Facility does not exceed obstruction standards and would not be a hazard to air navigation. Therefore, no FAA lighting or marking would be required for the Facility proposed in this Application.

Tarpon evaluated the project to determine whether it fell within any of the "listed" categories requiring review under NEPA. The "listed" categories, included in 47 C.F.R § 1.1307, are activities that may affect wilderness areas; wilderness preserves; endangered or threatened species; critical habitats; National Register historic districts, sites, buildings, structures, or objects; Indian religious sites; flood plains; and wetlands. The resulting report, included in the NEPA Report attached hereto as Exhibit I, confirms that the Property does not fall under any of the NEPA "listed" categories of 47 C.F.R. §1.1307. Therefore, the proposed Facility does not require review by the FCC pursuant to NEPA.

## **IX. ESTIMATED COST AND SCHEDULE**

### **A. Overall Estimated Cost**

The total estimated cost of construction for the Facility is \$325,000.00. This estimate includes:

- (1) Tower (cost of the tower) and foundation costs (including installation) of approximately \$135,000.00;
- (2) Site development costs of approximately \$160,000.00; and
- (3) Utility installation costs of approximately \$30,000.00.

### **B. Overall Scheduling**

Site preparation and engineering would commence immediately following Council approval of the Applicants' Development and Management ("D&M") Plan and is expected to be completed within four to five weeks. Installation of the monopole structure, antennas, and associated equipment is expected to take an additional eight weeks. The duration of the total construction schedule is approximately 15 weeks. Facility integration and system testing are expected to require an additional two weeks after the construction is completed.

**X. CONCLUSION**

This Application and the accompanying materials and documentation demonstrate that a significant public need exists in the Town for improved wireless services and that the Facility would not have any substantial adverse environmental effects. The Applicants, therefore, respectfully submit that the public need for the Facility far outweighs any potential environmental effects resulting from the construction of the Facility.

The Applicants therefore respectfully request the Council grant a Certificate of Environmental Compatibility and Public Need for the Facility.

RESPECTFULLY SUBMITTED,

**TARPON TOWERS II, LLC,**

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